



DEPARTMENT OF VETERANS AFFAIRS

8302-01

38 CFR Part 17

RIN 2900-AO05

Medical Benefits for Newborn Children of Certain Woman Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulation concerning the medical benefits package offered to veterans enrolled in the VA health care system. This rulemaking updates the regulation to conform to amendments made by the enactment of the Caregivers and Veteran Omnibus Health Services Act of 2010, which authorized VA to provide certain health care services to a newborn child of a woman veteran who is receiving maternity care furnished by VA. Health services for newborn care will be authorized for no more than seven days after the birth of the child if the veteran delivered the child in a VA facility or in another facility pursuant to a VA contract for maternity services.

DATES: Effective Date: This final rule is effective [Insert date of publication in the Federal Register].

Applicability Date: This regulation is applicable to medical care provided on or after May 5, 2010.

FOR FURTHER INFORMATION CONTACT: Holley Niethammer, Veterans Health Administration, 3773 Cherry Creek North Drive, Denver, Colorado 80209 (303) 370-5062. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 5, 2010, the President signed into law the Caregivers and Veterans Omnibus Health Services Act of 2010, Pub. L. 111-163. Section 206 of the public law, codified at 38 U.S.C. 1786, authorizes VA to “furnish health care services . . . to a newborn child of a woman veteran who is receiving maternity care furnished by [VA] for not more than seven days after the birth of the child if the veteran delivered the child in--(1) a [VA] facility . . . ; or (2) another facility pursuant to a [VA] contract for services relating to such delivery.” We note that the statutory authority does not extend to newborn children of female partners or relatives of veterans who are not veterans receiving maternity care from VA. In other words, this benefit is exclusive to newborn children of female veterans who themselves have been receiving maternity care from VA prior to the birth of the child and who otherwise meet the requirements of the law. We recognize that in some cases a newborn child of a woman veteran may be placed for adoption at the time of birth or shortly thereafter, or may be abandoned. Notwithstanding that the birth mother may not be willing or able to raise the child following birth, VA will provide newborn care for the date of birth and the first seven calendar days of life to any child delivered by a woman veteran who is receiving care under § 17.38(a)(1)(xiii). This is the broadest reasonable interpretation of the statutory authorization to provide care to the newborn child of a woman veteran,

because the statute does not clearly require that the woman veteran be, or continue to be, the child's legal parent or guardian after birth.

We interpret section 1786 to mean that newborn care is one of the health care services authorized by Congress in 38 U.S.C. 1710. This rulemaking implements this interpretation of section 1786. We note that we have been providing this care since the effective date of the statute, May 5, 2010.

VA implemented section 1710 in current 38 CFR 17.38, which prescribes the types of medical care that are included in what is known as the VA "medical benefits package." This rulemaking amends § 17.38(a) to include newborn care as a service provided under the medical benefits package. Pursuant to current § 17.38(b), care "will be provided to individuals only if it is determined by appropriate healthcare professionals that the care is needed to promote, preserve, or restore the health of the individual and is in accord with generally accepted standards of medical practice."

For the above reasons, we amend 38 CFR 17.38(a)(1) consistent with section 1786 to provide: newborn care, post delivery, for a newborn child for the date of birth plus seven calendar days after the birth of the child when the birth mother is a woman veteran enrolled in VA health care and receiving maternity care furnished by VA or under authorization from VA and the child is delivered either in a VA facility, or in another facility pursuant to a VA authorization for maternity care at VA expense. VA will cover all medically necessary care for the newborn(s) for the date of birth plus the first seven calendar days after birth, beginning on the day after the child is born and ending at midnight on the seventh full calendar day thereafter. This is the broadest reasonable interpretation of the statute, which authorizes needed care "for not more than seven

days after the birth of the child.” 38 U.S.C. 1786(a). The newborn care will include post-delivery care, including newborn care, determined by appropriate healthcare professionals necessary to promote, preserve or restore the health of the child in accordance with generally accepted standards of medical practice (§ 17.38(b)).

Finally, for clarity and continuity, we are renumbering current § 17.38(a)(1)(xiv), which addresses the completion of forms, to § 17.38(a)(1)(xv) and inserting newborn care at § 17.38(a)(1)(xiv) to follow pregnancy and delivery services at § 17.38(a)(1)(xiii).

Effect of Rulemaking

Title 38 of the Code of Federal Regulations, as revised by this final rulemaking, represents VA’s implementation of its legal authority on this subject. Other than future amendments to this regulation or governing statutes, no contrary guidance or procedures on this subject are authorized. All VA guidance must be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

Administrative Procedure Act

This rulemaking is VA’s interpretive regulatory guidance on a statutory amendment to 38 U.S.C. 1786. This rule does not create any new rights or duties. Accordingly, this rule is being published as a final rule pursuant to 5 U.S.C. 553(b)(A), which exempts interpretive rules from the notice-and-comment requirements of 5 U.S.C. 553. Because this rule merely interprets a statute, it is effective as of the date of the

statute it interprets, i.e., May 5, 2010, pursuant to 5 U.S.C. 553(d)(2), which exempts interpretive rules from the delayed effective date requirements of 5 U.S.C. 553.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” which requires review by the Office of Management and Budget (OMB) as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This final rule will have no such effect on State, local, or tribal governments, or on the private sector.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

Regulatory Flexibility Act

The initial and final regulatory flexibility analyses requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601-612, are not applicable to this rule, because a notice of proposed rulemaking is not required for this rule. Even so, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. This final rule will not directly affect any small entities. Therefore, pursuant to

5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this final rule are Veterans Medical Care Benefits; 64.010.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on November 4, 2011, for publication.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Caregivers program, Claims, Health care, Health facilities, Newborns, Pregnant women, Veterans.

Dated: December 13, 2011

Robert C. McFetridge,
Director of Regulation Policy and Management,
Office of the General Counsel,
Department of Veterans Affairs.

For the reasons stated in the preamble, VA amends 38 CFR Part 17 as follows:

PART 17 -- MEDICAL

1. The authority citation for part 17 continues to read as follows:

AUTHORITY: 38 U.S.C. 501, and as noted in specific sections.

2. Amend § 17.38 by:

- a. Redesignating paragraph (a)(1)(xiv) as paragraph (a)(1)(xv).
- b. Adding a new paragraph (a)(1)(xiv).
- c. Revising the authority citation at the end of the section.

The addition and revision read as follows:

§ 17.38 Medical benefits package.

(a) * * *

(1) * * *

(xiv) Newborn care, post delivery, for a newborn child for the date of birth plus seven calendar days after the birth of the child when the birth mother is a woman veteran enrolled in VA health care and receiving maternity care furnished by VA or under authorization from VA and the child is delivered either in a VA facility, or in another facility pursuant to a VA authorization for maternity care at VA expense.

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(Authority 38 U.S.C. 101, 501, 1701, 1705, 1710, 1710A, 1721, 1722, 1782, 1786)

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